MONTANA LEGISLATIVE HISTORY

Chapter 373 19 79

Bill H 443 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2/2	C	Hearing Date(s)	3/3	C
		C			C
		C			C
		C	Date out	3/3	C
Date Out	2/2	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 373

HOUSE BILL NO. 443

INTRODUCED BY FEDA, BRAND, DONALDSON, NATHE, ELLERD, PISTORIA

IN THE HOUSE

January 29, 1979	Introduced and referred to Committee on Judiciary.
February 2, 1979	Committee recommend bill do pass. Report adopted.
February 3, 1979	Printed and placed on members' desks.
February 5, 1979	Second reading, do pass.
February 6, 1979	Considered correctly engrossed.
February 7, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 8, 1979	Introduced and referred to Committee on Judiciary.
March 3, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 6, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 10, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, pass consideration.

March 16, 1979	Second reading, amendments adopted.
March 17, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

LC 0925/01

HOUSE BILL NO. 443

INTRODUCED BY Fred Brand Doudlah WATH
Ellen Pistoria

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT INTEREST ON A JUDGMENT INVOLVING A CONTRACTUAL OBLIGATION MUST BE PAID AT THE RATE SPECIFIED IN THE CONTRACTUAL OBLIGATION; AMENDING SECTIONS 31-1-107 AND 31-1-110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-1-110, MCA, is amended to read:

"31-1-110. Interest -- judgment. (1) ~~Interest~~ Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state at the rate of 6% per annum and no greater rate. Such interest must not be compounded in any manner or form.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation."

Section 2. Section 31-1-107, MCA, is amended to read:

"31-1-107. Interest rate allowed by agreement. (1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement ~~until the entry of judgment~~.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement ~~until the entry of judgment~~.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed according to the terms of the agreement ~~until the entry of judgment~~."

-End-

HB 443
INTRODUCED BILL

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 426	make person ineligible to receive unemployment benefits for 3 months if income exceeds $20,000	1/27	Moore	Thursday Feb. 1	do not pass	2/1
HB 432	extend arrest posers of hwy patrolmen to hwy rest areas, etc.	1/27	Menahan	Thursday Feb. 1	pass-amend	2/1
HB 438	require agency to prepare estimate of impact of rulemaking,	1/27	Ramirez	Thursday Feb. 1	pass	2/1
HB 443	provide that interest on a judgment -contractual obligation must be paid at the rate specified	1/29	Feda	Friday 2nd	pass	2/2
HB 447	operator or chauffeurs license may not be issued - mentally ill when applying	1/29	Gesek	Friday 2nd	Tabled	2/2
HB 455	limit amount of funds contributed by out-of-state contributors	1/29	Underdal	Friday 2nd	do not pass	2/6

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 2, 1979

The regular meeting of the Judiciary Committee was called to order at 8:00 a.m. by Chairman John Scully in room 436 of the Capitol Building. All members were present except Representatives Day and Eudaily, excused and Representative Teague, who was absent.

Scheduled for hearing were House Bills 443, 447, 455, 456 and Senate Bill 120.

HOUSE BILL NO. 447: Representative Gesek. This bill would provide that an operator's or chauffeur' license not be issued if the individual is adjudged seriously mentally ill at the time of applying for the license. We should be able to refuse them.

REPRESENTATIVE KEEDY: What connection has their been between mental illness and having a drivers license.

REPRESENTATIVE SCULLY: How can they find out if someone is mentally ill and shouldn't have a drivers license.

SERGEANT TOOLEY: Montana Highway Patrol. Currently we have no way of finding out.

REPRESENTATIVE ROTH: What is competent jurisdiction.

There was some general discussion which asked several other questions, which Representative Gesek could not answer. The hearing closed on House Bill 447.

SENATE BILL NO. 120: Senator Van Valkenburg. This bill will revise the laws relating to corporations and partnerships. He went through the bill and explained it briefly.

TOM TUCKER: Civil Functions Division, Secretary of states office. We oppose the bill.

There was very little discussion and the hearing closed on Senate Bill 120.

HOUSE BILL NO. 443: Representative Feda. This bill provides that interest on a judgment involving a contractual obligation must be paid at the rate of interest specified in the contractual obligation. The interest rate would drop to 6% but this bill would change it so that the interest rate would carry on.

HAROLD PITTS: Bankers Association. It seems to me that 6% is to low today. However, we endorse the bill.

There as no other discussion and the hearing closed on House Bill 443.

HOUSE BILL NO. 456: In the absence of Representative Eudaily, Representative Lory presented the bill to the committee. The bill that was passed in 1975 had a committee of four to appoint the commissioner. The same commission of four will draw up a list of no less than three nor more than four and the appointment will then be made by the Governor. This will change the method of appointment of the Commissioner of Campaign Practices, and revise the term of office. The committee on elections has made it at six years instead of four, and change it from June to January on the odd year.

REPRESENTATIVE SCULLY: There is considerable disagreement wha the extension whould be for Mr. Hanson. He elaborated on this further.

PHIL TAWNEY: Executive Secretary, State Democratic Party. It is primarily a separation of powers problem. He offered an amendment on page 3, line 21. This would allow John Hanson, if he is reappointed, to be in office before the primary election. I would suggest another amendment for an immediate effective date. We are in support of this bill with the proposed amendments.

AL WILLIAMS: AFL-CIO. The office has been an important position in the state government. Adoption of HOuse Bill 456 will make certain that Montana laws governing political campaigns will be upheld through the judicial review process. (copy of testimony attached #1)

MARGARET DAVIS: League of Women Voters. We have discovered problems with the method of appointment. The Commissioner of Campaign Finances and Practices office has broad based public support and House Bill 456 would help to insure the legal viability of Montana's laws. (copy of testimony attached#2)

JANELLE FALLON: Montana Chamber of Commerce. We were also involved with some of the ad hoc committee. We do want the office to be 20th department of state government. We do support this bill.

JOHN HANSON: Commissioner of Campaign Practices. It is not necessarily a bill which our office favors but we see it as a way to correct a problem that has arisen. He gave a list of the state offices that support the bill.

There were no opponents.

REPRESENTATIVE LORY: The bill suggests 3 to 5 names but it doesn't say that the appointment has to be someone on the list.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
February 2, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. All members were present except Representative Teague. The meeting was called to order at 8:40 a.m. by Chairman Scully in Room 436 of the Capitol Building.

HOUSE BILL NO. 424: Representative Lory moved to amend page 5, lines 18 and 19, to strike all of the new language. Also strike "such" and insert "the". The motion carried with the vote unanimous.

Representative Keedy moved to amend page 5, line 13, by striking "or property owners". The motion carried with the vote unanimous. There was some discussion about whether it includes a bar owner and it was decided that it did.

Representative Lory moved "do pass as amended" and the motion carried with the vote unanimous.

HOUSE BILL NO. 443: There was some discussion about the rate of interest and the intent of the bill. Representative Daily moved "do pass" and the motion carried with Representative Keyser voting "no".

HOUSE BILL NO. 456: Mr. Scully said that they would hold this bill until everyone on the committee has had time to study it thoroughly. There was some discussion about the method of appointment.

The meeting adjourned at 9:50 a.m.

Mr. Scully asked if the members wanted to send a gift to Representative Ralph Eudaily who is in the hospital, St. Patricks in Missoula. This will be done.

John P. Scully, Chairman

JPS:mec

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

	BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
3.	SB-367	2/5/79	2/12/79	2/12/79	2/12/79					
4	SB-324	2/5/79	2/12/79	2/12/79			2/12/79			
5	SB-376	2/6/79	2/14/79	2/14/79			2/14/79			
6.	SB-380	2/6/79	2/14/79	2/14/79	2/14/79					
7.	SB-382	2/6/79	2/15/79	2/16/79			2/15/79			
8.	SB-386	2/6/79	2/15/79	2/19/79			2/19/79			
9.	SB-393	2/6/79	2/15/79	2/19/79			2/18/79			
0	HB-369	2/6/79	3/3/79	3/3/79				3/3/79		
1.	HB-376	2/6/79	3/5/79	3/5/79						3/5/79
2.	SB-394	2/7/79	2/15/79	2/16/79	2/15/79					
3	SB-404	2/7/79	2/16/79	2/16/79			2/16/79			
4	SB-409	2/7/79	2/16/79	2/19/79			2/18/79			
5	HB-32	2/7/79	3/2/79	3/6/79					3/3/79	
6	SB 420	2/8/79	2/16/79	Tabled 2/18/79						
7.	HB 438	2/8/79	3/15/79	3/15/79					3/15/79	
8.	HB 443	2/8/79	3/3/79	3/3/79					3/3/79	

Use a separate sheet for Senate, House Bills, and Resolutions.

Bills to be heard by Senate Judiciary
Saturday, March 3, 1979

1. HB 369 (H. Robbins)
By request of the Dept. of Revenue

Proposed bill - provides that the department of revenue's agent can send notice of levy on property for taxes by certified mail. As originally drafted, the bill also provided that a levy on salaries and wages would continue in effect until the amount due is recovered - this provision of the bill was deleted by the House.

2. HB 464 (Keyser)

Current law - When a youth alleged to be delinquent is taken into custody, he must be informed of his rights immediately. He can waive his rights under the following situations:

(a) if youth is under 12, his parents can make a waiver (no mention of with or without counsel)
(b) if youth is over 12, youth and his parents can make waiver (no mention of with or without counsel)
(c) if youth over 12, if youth and his parents do not agree, youth can waive only with advice of counsel.

Bill as originally proposed - only effective change was in (c) so that a youth over 12, who disagrees with his parents, can waive his rights without counsel.

Bill as amended by House - clarifies (a) and (b) by specifying that waiver by a youth's parents or by a youth and his parents can be with or without counsel. Amended bill reasserts requirement that a youth over 12 who disagrees with his parents can waive his rights only with advice of counsel and adds new (3) that states that presence of counsel is not required for any purpose other than waiver of constitutional rights.

Net effect of HB 464 as amended:
clarify 41-5-303(2)(a) and (b) and add new (3).

Note: HB 464 deals with waiver of rights of a youth who who has been apprehended and before a petition has been filed. SB 454 deals with a youth's right to counsel after a petition has been filed. These two bills are not in conflict (but would have been as HB 464 was originally drafted).

3. HB 443 (Feda)

Current law - parties to a contract can agree on a rate of interest to be paid on a loan. Limits are set on the rate by statute; these rates can be higher than the 6% rate allowed on judgments recovered in court. Presently, if there is a lawsuit on a contract, a party can receive the higher interest up until judgment and then he is limited to the 6% limit after judgment.

Proposed bill - would amend 31-1-110 and 31-1-107 to provide that interest on a judgment for breach of contract must be paid at the agreed-upon interest rate. This means that the interest would be paid at the contract rate both before and after judgment.

4. HB 422 (Dory)

Current law makes it a criminal offense to possess dangerous drugs.

Proposed bill - creates a new criminal offense of possession of chemicals that can readily be used to manufacture dangerous drugs. The House added a 2-year minimum penalty. Section 2 provides for exemptions for licensed drug manufacturers persons authorized by rules of the Board of Pharmacy, and employees and students (added by House) of colleges and universities engaged in authorized teaching or research. Section 3 gives the Board of Pharmacy rule-making authorizatio

Problems: 1. Subsection (3) of Section 1 does not require that particular combinations of chemicals be possessed in order to constitute the crime.

Suggestions: on page 2, lines 9 & 10, change "precursors to a dangerous drug" to "the chemical that can be manufactured from such precursors or the chemical contained in such compound or mixture"

2. There is no statement of intent.

5. HB 500

Section 1. Requires reports to the Department of Justice of all sales and transfers of certain chemicals which can readily be used to manufacture dangerous drugs; grants the department the power to add or subtract from the list of chemicals by rule; and provides for exemptions from the reporting requirement (the House added transfer within a college or university for authorized teaching or research).
Section 2. Requires the department to provide forms for reports requiring specified information.
Section 3. Requires the department to provide forms for regents requiring specified information.
Section 4. Requires reports to the Department of Justice of losses and thefts of such chemicals.
Section 5. Makes it a felony to knowingly fail to report.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1979

The fiftieth meeting of the Senate Judiciary Committee was called to order in room 311 of the capitol building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 464:

This is an act to change the requirement that a youth may waive his rights only with the advice of counsel when the youth is over the age of twelve and the youth and his parents do not agree about making a waiver.

Representative Keyser gave an explanation of this bill, stating that what has happened is that some judges have interpreted the law to say that any time a youth is picked up for any little thing that he should have counsel there representing him.

Tom Honzel, representing the Montana Association of County Attorneys, stated that the youth court act passed in 1964 and the language seemed to indicate that you didn't always have to have an attorney present and the Montana Supreme Court said when you question a youth, you have to have an attorney present. He stated that the policy is to work with a youth early and do it on an informal basis.

Dick Meeker, a juvenile probation officer in Montana, gave a statement in support of this bill and he said that many youth are having to go to court when they could work with them on an informal basis.

There were no further proponents.

Karen Mikota, representing the Montana League of Women Voters, stated that the original bill, when it first came out, stated "only with the advice of counsel" and she said she did not see where it does anything more than the original law did.

Senator Towe stated that the meat of the bill is in subsection (3) and he felt that you certainly want counsel present if he is about ready to sign consent of something and wondered why they need with or without advice of counsel.

Senator Turnage explained that they have to send a letter to the sheriff with the warrant, then the sheriff has to travel anywhere from two to fifty miles, it costs a lot of money to do it; and he felt that if the letter would be effective, the bill would be alright. He stated that he was apprehensive that they would come down hard on someone if he does not answer the letter.

Senator Lensink asked Joan Mayer from the Legislative Council to research this item.

There being no further questions or comments, the hearing on this bill closed.

CONSIDERATON OF HOUSE BILL443:

This is an act to provide that interest on a judgment involving a contractual obligation must be paid at the rate specified in the contractual obligation, etc. Representative Feda gave an explanation of this bill. He stated that HB 475 deals with the same section, that this just got in the committee and it is not scheduled yet but should probably be looked at the same time.

There were no further proponents and no opponents.

Senator Van Valkenburg said the reason for HB 475 is that with the rate of interest on judgments being 6 per cent, it is a real incentive for a defendant to appeal the case, take that money that might be involved in the judgement and invest it and, in effect, drag the case on. He said that the economic situation is such that this can make more than 6 per cent with the money nowdays.

There being no further questions or comments, the hearing on this bill was closed.

Senator Towe moved that this bill be concurred in. The motion carried unanimously.

Senator Towe then moved that we reconsider the action taken on this bill. The motion carried unanimously.

Senator Towe moved that the bill be amended on page 2, following line 16, by adding "Section 3. Effective date. This act shall be effective on July 1, 1979 and shall apply to all judgments entered after that date." The motion carried unanimously.

Date 3/3/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Gilt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

Fiesta (Towe)

HB 443

1. Page 2:
Following: line 16
Insert: "Section 3. Application.
This act applies only to
judgments entered after
June 30, 1979."

Tony (O'Hara)

HB 422

1. Page 2, lines 4 through 10.
Strike: subsection (3) in its
entirety

Hearing on HB 464 - Mon. Cons. Fish & Game Committee

SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 1/3/89

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Ed Lee	Mont. Wildlife Fed.	HJR 5 SJR 7	✓	
Tim Hall	County Attorneys	HB 422 HB 464	✓	
Cal Simshaw	Dept. of Revenue	HB 369	✓	
" "	" "		✓	
Karen Mahaffey	Montana League of Women Voters	HB 464		✓
Pat Smith	Mont. Trial Lawyers Assoc.	HB 10	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

STANDING COMMITTEE REPORT

March 3 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 443

Feda (Towe)

Respectfully report as follows: That House Bill No. 443

third reading bill, be amended as follows:

1. Page 2.
Following: line 16
Insert: "Section 3. Application. This act applies only to judgments entered after June 30, 1979."

And, as so amended,
BE CONCURRED IN

~~DO PASS~~

Senator Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 443

INTRODUCED BY FEDA, BRAND, DONALDSON, NATHE, ELLERD, PISTORIA

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT INTEREST ON A JUDGMENT INVOLVING A CONTRACTUAL OBLIGATION MUST BE PAID AT THE RATE SPECIFIED IN THE CONTRACTUAL OBLIGATION; AMENDING SECTIONS 31-1-107 AND 31-1-110, MCA."

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Section 1. Section 31-1-110, MCA, is amended to read:

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(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation."

Section 2. Section 31-1-107, MCA, is amended to read:

"31-1-107. Interest rate allowed by agreement. (1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement ~~until the entry of judgment~~.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement ~~until the entry of judgment~~.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed according to the terms of the agreement ~~until the entry of judgment~~."

SECTION 3. APPLICATION. THIS ACT APPLIES ONLY TO JUDGMENTS ENTERED AFTER JUNE 30, 1979.

-End-

REFERENCE BILL